Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

NO. **79-1142**

CHRISTIAN BEACON PRESS, INC., Petitioner

v.

CITY OF CAPE MAY, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION.

Dated:

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INDEX

	Page
Opinion Below	2
Jurisdiction	2
Question Presented	3
Statement of the Case	4
Reasons for Granting the Writ	
Whether it is a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution for a taxing entity to deny a real property tax exemption to a religious corporation where other nonprofit charitable, religious and other such corporations, similarly situated, have been granted such exemtions by New Jersey authorities under state statutes authorizing such exemptions	15
Appendix (Opinion and judgment of Superior Court of New Jersey, Appellate Division) . .	App. 1
(Opinion and judgment of New Jersey Board of Tax Appeals)	App. 13
Supreme Court Order of Denial	36

CITATIONS

Page

Cases:

Bloomfield v. Academy of Medicine, 47 N.J. 358 (1966) . 16, 24

Boys' Club of Clifton, Inc. v. Township of Jefferson 72 N.J. 389 (1977) 16, 24

City of Elizabeth v. Bayway Community Center 19 N.J. Misc. 263, 18 A.2d 558 (State Bd. of Tax App. 1941) 17

Hillsborough v. Cromwell, 326 U.S. 620 (1946) 24

Moses Lake Homes v. Grant County, 365 U.S. 744 (1961) 25

Postal-Telegraph Cable Co. v. Martin, 18 N.J. Misc. 567, 15 A.2d 197 (Bd. Tax App. 1940) 15

Page

Statutes:

28 U.S.C. §1257 (3) 3

N.J.S. 54:4-3.6 . . . . . 4, 15

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NO.

CHRISTIAN BEACON PRESS, INC., Petitioner

v.

CITY OF CAPE MAY, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION.

The petitioner, Christian Beacon Press, Inc. respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Superior

Court of New Jersey, Appellate Division, entered in this proceeding on June 22, 1979.

OPINION BELOW

The opinion of the Superior Court of New Jersey, Appellate Division, which was not reported for publication, appears in the appendix hereto. The judgment entered therein reversed the judgment of the New Jersey Division of Tax Appeals, which filed an opinion, not reported for publication. That opinion also appears in the appendix hereto.

JURISDICTION

The judgment of the Superior Court of New Jersey, Appellate Division was entered on June 22, 1979. A petition for certification was addressed to the Supreme Court of New Jersey, which such petition was denied on October 4, 1979.

This petition is being duly filed within the time permitted for filing from the order of the New Jersey Supreme Court denying petitioner's petition for certification to that Court. This Court's jurisdiction is invoked under 28 U.S.C. §1257 (3).

QUESTION PRESENTED

Whether it is a violation of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution for a taxing entity to deny a real property tax exemption to a religious corporation where other nonprofit charitable, religious and other such corporations, similarly situated, have been granted such exemptions by New Jersey taxing authorities under state statutes authorizing such exemptions.

STATEMENT OF THE CASE

New Jersey law mandates an exemption from real property taxation for certain uses. The applicable statute, N.J.S. 54: 4-3.6, provides, in part: "The following property shall be exempt from taxation under this chapter: ... all buildings actually and exclusively used in the work of associations and corporations organized exclusively ... for religious, charitable ... purposes..."

The petitioner Christian Beacon Press, Inc. (hereinafter referred to as CBP) is a New Jersey corporation organized in 1940 pursuant to Title 15 of the New Jersey statutes, the Title providing for non-profit corporations. Its certificate authorized it to acquire, maintain, own and have a place of religious worship.

CBP purchased the premises in question in this action in 1962. The premises were in 1962 and are now occu-

pied by a six story hotel. The hotel was vacant in 1962 and CBP purchased it as a site for its Bible Conference. Those Conferences take place over the entire summer and CBP's president, Dr. Carl Mc Intire, was of the opinion that if CBP was going to have conferences lasting that long, it would need to have facilities so that attendees would have a place to eat and sleep.

There was abundant testimony that the hotel has been operated as a Bible Conference since then. Indeed, Cape May's assessor admitted that one cannot go anywhere in the hotel without seeing "Christian" or "Bible Conference". In addition to the hotel rooms for guests customarily found in hotels, there are two auditoriums used for church services. There is a library, containing primarily religious books and magazines, from which religious radio broadcasts are made.

There is a prayer room in which religious meetings are held and a book store selling Bibles, sermons and other religious literature exclusively, and Sunday school classrooms. There is a nursery for small children, while parents attend services. Religious literature is placed on a stand in the first floor lobby. There is a large sign in front of the building bearing the words "Cape May Bible Conference".

Each summer, Bible conferences are conducted on the premises. These conferences run from Memorial Day to Labor Day. At each conference, visiting speakers, usually ministers of the Bible Presbyterian Church, the church in which Dr. Mc Intire is a pastor, or of other fundamentalist churches having views similar to that Church, are present. On each day of these conferences, other than Sunday, the speakers conduct Bible classes in the

morning. A church service is conducted in the evening and after that hymns are sung. The morning and evening services are organized services, but there are a number of others that are informal; the young people meet with the speakers for conferences and extra Bible study times in the early morning or late evening. On each Sunday while the conferences are taking place, Sunday school classes and a formal church service are held in the morning, a sacred concert in the afternoon and a formal church service in the evening. The conferences are run by a conference pastor who works with conference attendees in a pastoral relationship.

Those conferences are undoubtedly a meaningful, religious experience for those attending. Mrs. Mc Intire testified that attendees look upon them as a "mission Field", and opportunity to tell

people that Christ is their saviour. Mrs. Cox, an unpaid volunteer who works at the conferences each summer, testified that she had a once in a lifetime experience of being saved and being born again, an experience that meant to her eternal life.

During the offseasons, weekend Bible Conferences were held for many years. With the coming of the energy crisis, weekend conferences were discontinued, but Sunday church services are still held on the premises as were the mid-week prayer meetings throughout the year.

The Christian Admiral is operated in accordance with the strict standards of the Bible Presbyterian Church. Smoking and drinking are prohibited on the premises. Registrants are so advised when they enter the Conference. Unmarried couples are turned away. All registrants

must become Conference members and are informed that they are expected to attend Conference sessions. Bells are rung throughout the hotel before meetings. Gospel music is broadcast in the corridors. The Admiral's gift shop is closed when meetings are in session. Its swimming pool is closed on Sunday. A dress code is in effect; coats are required in the dining room. Many persons would consider the Christian Admiral's rooms spartan; none have radio or television. Many do not have a private bath.

The Christian Admiral has two dining rooms, a snack shop and a cafeteria for the staff. Each table in the dining rooms have placemats containing scriptural verses and notices of Conference activities and a card with a scriptural verse. The dining room hostesses are instructed to inform diners of the Conference activities and to invite them to attend the

meetings.

Both the rooms and the dining rooms are available to persons who are not attending the conferences and there was testimony that outsiders have occasionally used either or both. In addition, outside organizations are permitted to make use of the Christian Admiral's premises occasionally. General Synod meetings of the Bible Presbyterian Church have been held there, as were two prior world congresses of the International Council of Christian Churches. The annual meeting of the Independent Board of Presbyterian Home Missions is held there in October of each year. The Gideon Society has held a conference there, as have several other church groups. Youth groups from Dr. Mc Intire's church have used it for retreats. A local Rotary Club used the premises once a month for a short period one winter, as did weight watchers'

group and a nursery school. The Audubon Society held an annual meeting there twice. No charge was made to any of these organizations other than for services actually rendered, e.g., food consumed. Every person present for meetings and sessions of these outside organizations was required to conform to the rules mentioned above promulgated for Conference attendees. Such outside use however is rare; Dr. Mc Intire testified that the Christian Admiral's facilities are used almost totally by conference members.

The Christian Admiral does advertise. Most of its advertising is through Dr. Mc Intire's religious broadcast, CBP's newspaper, The Christian Beacon, and the mailing lists of the Christian Admiral (consisting of prior Conference attendees) and of Dr. Mc Intire's church. A brochure of one of its offseason weekend

conferences for one year was admitted into evidence before the Division of Tax Appeals. Several of the 38 weekends mentioned appeared to have a non-religious orientation, but even they had a religious orientation and the brochures, like other advertising of the Christian Admiral, was confined to the mailing lists mentioned above.

The entire Christian Admiral operation sustains a deficit. Dr. Mc Intire's church in Collingswood, other churches and church groups and CBP's newspaper in Collingswood pay some of the Christian Admiral's expenses and make up its deficit. Both the federal government and New Jersey have recognized that the Christian Admiral and CBP are non-profit entities. The Internal Revenue Service has issued to CBP exempt organization status. The Department of Labor and Industry of New Jersey has exempted CBP

from having to make contributions for unemployment compensation, by reason of the exemption for churches and organizations operated primarily for religious purposes, and from the minimum wage statutory provisions by reason of the exemption for summer camps, conferences and religious retreats. New Jersey's Department of the Treasury of this state has exempted CBP from corporate franchise taxes by reason of its finding that CBP is a non-profit corporation. Cape May's assessor conceded that the Christian Admiral does not make a profit.

The Bible Conference is an agency of and approved by the General Synod of the Bible Presbyterian Church. The Bible Conference is an affiliated body of the International Council of Christian Churches, an international organization composed of 252 Protestant denominations. Three of the visiting speakers of past

Conferences, all Protestant ministers none of whom are members of or assigned to Dr. Mc Intire's Collingswood church, testified at the hearing in the Division of Tax Appeals; all three agreed that the activities of the Conferences are in accord with the views of the Synod or Council and that they saw nothing take place not in accord with the beliefs and practices espoused by those bodies.

We submit that the New Jersey statute previously mentioned N.J.S. 54:4-3.6, as interpreted by New Jersey's courts, required the granting to petitioner of the requested real property tax exemption. By granting such exemption to other charitable and religious corporations similarly situated and denying it here, petitioner was denied the equal protection of the laws guaranteed to it by the Fourteenth Amendment. This argument was not raised before the

New Jersey Division of Tax Appeals, but that is an administrative agency without authority to determine constitutional questions. Postal-Telegraph Cable Co. v. Martin, 18 N.J. Misc. 567, 15 A.2d 197 (Bd. Tax App. 1940). Before the New Jersey Superior Court, Appellate Division, and the New Jersey Supreme Court, although we did not cite constitutional provisions, we made the argument we make here -- that we are similarly situated to nonprofit charitable and religious corporations to which our courts have granted real property tax exemptions and that we should be similarly treated.

REASONS FOR GRANTING THE WRIT

The New Jersey statute mandating an exemption from local real estate taxation for buildings of religious corporations (N.J.S. 54:4-3.6) requires that such buildings be actually and exclu-

sively used for the work of such corporations. Although the statute requires exclusive use, the Tax Court affirmed there was (overwhelming testimony), etc. New Jersey case law has settled that an outside use will not bar an exemption so long as such use is de minimis or not of a type different from the paramount exempt use. Thus, in Boys' Club of Clifton, Inc. v. Township of Jefferson, 72 N.J. 389 (1977), the claimant operated an eight week summer camp on its premises. During the remainder of the year, college groups were occasionally permitted to use the area for nature and ecology studies and church groups were also permitted to occupy the facilities. The Court held the latter uses incidental. In Bloomfield v. Academy of Medicine, 47 N.J. 358 (1966) the applicant's premises consisted of two buildings, one housing a medical library and the second

building housing an administrative center. The latter contained meetings rooms used for symposia offered by the applicant and by outside medically related groups. The Court held that use by the outside groups did not defeat the claimed exemption. In City of Elizabeth v. Bayway Community Center, 19 N.J. Misc. 263, 18 A.2d 558 (State Bd. of Tax App. 1941), the premises were used as a community center for the benefit of the residents in the area. The center had been financed by charitable contributions, in part from Standard Oil Company of New Jersey. The City argued against an exemption on the ground that Standard Oil employees benefitted from the center. The Board ruled that any such benefit was incidental and that it did not preclude exemption. A similar example would be the practice of some churches to operate bingo games. The games are

openly advertised and it is intended that persons other than church members will avail themselves of the entertainment provided. Yet the premises remain a church and in this State are universally given an exemption because functioning as churches are their paramount purpose and such other uses are in effect considered de minimis.

We submit that the paramount, overriding purpose of petitioner's building was the operation of a Bible Conference. As we pointed out in our Statement of the Case, Bible Conferences are conducted on the premises continuously from Memorial Day to Labor Day. Each day during that period, there are numerous church services, church programs and informal religious programs. Visiting preachers are on the premises throughout the entire period to conduct the services and to meet informally with attendees and staff.

A Conference pastor is on the premises throughout the period working with attendees in a pastoral relationship. During the offseason, weekend Bible Conferences are held and church services are conducted on Sunday throughout the year.

There are rooms and dating facilities on the premises for Conference attendees. But it is only natural and reasonable, where attendees are away from home, for sleeping and eating accommodations to be made available. Doing so is essential to the work of the Conference's activities since the attendees are gathered in one place and can more easily obtain maximum exposure to and avail themselves of the conference's work. It is the very nature of religious activity that people meet and if they are to meet for some extended period, that accommodations be provided for them.

Camp meetings and Bible conferences throughout this nation are held on that basis. The accomodations provided by the Christian Admiral are not luxurious. They are in fact spartan. And the persons using them must conform to the Conference's strict standards. As we pointed out in our Statement of the Case, smoking and drinking are prohibited, a dress code is in effect and entertainment facilities are closed during conference sessions and on Sunday. No dancing is allowed. Religious literature is in the rooms and through the premises. Cape May's assessor admitted that one cannot go anywhere on the premises without seeing references to religious matter. Registrants are advised when they enter the premises that they must conform to the Conference's requirements. They are also told that they are expected to attend Conference

sessions. They are continually reminded of the sessions. Bells are rung throughout the premises immediately before organized services. Gospel music is broadcast in the corridors.

The Christian Admiral is technically open to outsiders. But what outsider, apart from a believer, would want to stay there? The average vacationer, not so warmly devoted to the Conference's practices and beliefs or not accepting them, would find the constant reminders of those practices and beliefs an intolerable harrassment. It was not surprising that the testimony indicated that the Christian Admiral's facilities are in fact almost totally used by conference attendees.

It was suggested below that the Christian Admiral is located in a popular vacation area and the Conference attendees could or do use the premises

as a base for a vacation. It cannot be denied that Cape May is a popular vacation area. There was not a shred of evidence however that the Conferences are a facade or that persons staying on the premises are using the Conferences as a ruse for a vacation. We submit that no state could constitutionally deny a non-profit religious or charitable corporation the tax exemption on its real property when it grants such an exemption to other such corporations merely because the real property of the former is located in a vacation area without proof that the location caused the uses of the former's real property to be distorted.

Nor can it be denied that a couple of outside groups did use the Christian Admiral's facilities: the Audubon Society twice, a Rotary Club, a weight watcher's group and a nursery school on

a few occasions, the Gideon Society once. Church congresses have met there and youth groups from Dr. Mc Intire's church have used the premises for conferences. And a church mission board holds a meeting there once each year. All of these groups let with three exceptions are church related. Of those that are not, the uses testified to below amount to no more than a few isolated instances over some fifteen years. They represented the Conference's community cooperation with no financial gain.

We recognized that New Jersey need not constitutionally afford to religious organizations an exemption from real property taxation. New Jersey has chosen however to grant such an exemption. We do not argue that though a state may choose to grant such an exemption, it may not constitutionally require that the use such organizations make of their real

property be solely religious, any deviation therefrom, no matter how incidental, resulting in denial of the exemption. New Jersey has not so required however. Its highest court, in Boys' Club of Clifton Inc., supra, and Bloomfield, supra, held that though New Jersey statute requires exclusivity of use, exclusivity is not lost where there is incidental, de minimis, outside use.

New Jersey having so determined, the equal protection clause requires that it afford such exemption to the real property of all religious and charitable corporations whose use of them is exclusive, notwithstanding incidental outside use. As this Court held in Hillsborough v. Cromwell, 326 U.S. 620 (1946)

"The equal protection clause of the Fourteenth Amendment protects the individual from state action which

selects him out for discriminatory treatment by subjecting him to taxes not imposed on others of the same class. The right is the right to equal treatment." Id., p. 623

There, this Court held that a complaint alleging that New Jersey taxing authorities had discriminated against the respondent in the assessment of an intangible personal property tax stated a cause of action. And in Moses Lake Homes v. Grant County, 365 U.S. 744 (1961), this Court held violative of equal protection and void a tax on leaseholds which imposed a higher tax on certain leaseholds situated similarly to others on which a lower tax was imposed.

Here, the paramount use made by petitioner of the premises in question was for Bible conferences. There was nothing in the testimony offered below

showing that this was not petitioner's purpose or that such use was a sham fronting for something else. There was nothing in the testimony that the Conferences were a facade behind which Conference attendees were getting a vacation. Such use was a valid religious purpose coming within the New Jersey exemption statute. Outsiders may have used the premises on a few occasions and a couple of outside groups were allowed to use them again on a few occasions. Such use however, we submit, was no more than incidental. It was far more incidental than the weekly bingo games, to which outsiders are regularly invited and expected, that some churches have. So long as New Jersey holds that they remain entitled to an exemption, and it is unquestioned in this State that they do, we submit that it is a denial of equal protection to deny petitioner such an

exemption.

For these reasons, we submit that a writ of certiorari should be granted by this Court to review the determination below.

M. GENE HAEBERLE
Attorney for Petitioner

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2327-77

CHRISTIAN BEACON PRESS, INC.,
Petitioner-Respondent,

v.

CITY OF CAPE MAY,
Appellant.

Argued May 1, 1979 -- Decided Jun 22, 1979
Before Judges Matthews and Milmed.
On appeal from the Division of Tax Appeals.
Mr. Saul A. Wolfe argued the cause for appellant
(Messrs. Skoloff & Wolfe, attorneys
(Mr. Wolfe and Mr. Marvin Olick on the briefs).

Mr. M. Gene Haeberle argued the cause for petitioner-respondent.

PER CURIAM

The City of Cape May appeals from a determination by the Division of Tax Appeals (Division) granting tax exempt status for the year 1974 to the land and building comprising the Christian Admiral Hotel owned by respondent Christian Beacon Press, Inc. The exemption had been disallowed at the local and county levels.

The subject property consists of a multi-story hotel and auditorium building on a beachfront parcel of land in the City of Cape May, designated as Lot 1 in Block 156 on the local tax map. The entire property was assessed locally for the tax year 1974 at $719,150, the land being assessed at $300,000 and the building at $419,150. On review by the

County Board of Taxation, the local assessments were continued without change.

The property was acquired in 1963 by the Christian Beacon Press, Inc., a New Jersey corporation organized in 1940 under the provisions of Title 15 of the Revised Statutes. The basic purposes of the corporation as expressed in its certificate of incorporation are:

> To spread the Gospel of our Lord and Savior, Jesus Christ, and encourage and promote the teaching, study and defense of the Holy Scriptures, according to the fundamentalist view, throughout the world, by publishing, printing, advertising, selling, or otherwise issuing Christian and religious literature, newspapers, books, periodicals, or other printed matter, either under the corporation's name, or as agent for others.

Other purposes expressed in the certificate include: "(t)o organize, own and operate any and all businesses and enterprises in connection with the purposes of this corporation, which may be necessary"; to acquire "any property * * * either for an endowment or for general expenses for carrying out the purposes of the corporation"; "(t)o acquire, maintain, own, and have a place of religious worship." The certificate further provides that the corporation "shall not be operated for pecuniary profit."

From 1963 to 1973 the respondent corporation paid taxes on the property. It sought exemption in 1974.

The Christian Admiral Hotel was acquired by respondent for use as a place for a continuing Bible Conference. The property was at one time owned by appellant, City of Cape May. In 1951 the City sold the property to Maurice

Malakoff and Morris Soble, as tenants in common, the deed of conveyance, dated September 27, 1951, containing the following: "IT IS A CONDITION of this conveyance that the property herein conveyed shall not be transferred or conveyed by the grantees herein or by any subsequent grantees or assignees for any operation or purpose now or hereafter exempt from taxation under the Laws of the State of New Jersey." The conveyance to respondent from its grantor, the First Pennsylvania Banking and Trust Company, Trustee, etc., dated April 19, 1963, is expressly made "SUBJECT to the conditions made by the City of Cape May" in the abovementioned 1951 deed.

The hotel contains some 333 rooms with some 275 rentable units. It is open to the general public without restriction. Its facilities include: an olympic size swimming pool, two dining

rooms or restaurants, a snack bar, a cafeteria, a gift shop, a library, a bookstore primarily for the sale of bibles, sermons and other religious literature, offices for its chairman and treasurer, a prayer room, a fellowship room, a nursery and classroom for children, a bible room, an auditorium seating about 200 persons, used for church and Sunday School services, and a large auditorium seating about 1,500 persons.

Rates charged at the hotel vary with the seasons. In the summer of 1974 the daily rate for a single room with meals was $15 with hall bath and $21 with private bath. The rates were the same per person for a double room. There was testimony at the hearing in the Division that the rates are competitive with those charged by some of the other hotels in the area. There was also testimony that the hotel restaurants, as well as

the entire hotel enterprise, were operated at financial deficits.

Respondent claims that its property is entitled to exemption from local taxation because the hotel is used as a continuing Bible Conference with the dining and lodging accomodations being provided as part of, or ancillary to, the religious functions. The major religious activities include church services, hymn sings, bible classes, and lectures or discussions by visiting ministers, particularly in the summer. A 1973-1974 brochure for the hotel lists a number of religious events in the nature of retreats, meditations and hymn sings. Also listed are a number of secular recreational activities such as a beach party, wiener roast on the beach, gift wrapping instructions and gift shop sale, hobby demonstration, popcorn party, "photography frolic," and floral arrange-

ments. Guests at the hotel may, or may not, take part in any of the religious activities or services. Respondent argues that the "overriding purpose" of the hotel "is the operation of a Bible Conference." In explaining its open door policy, its chairman, who is also pastor of the Bible Presbyterian Church of Collingswood, testified: "We operate it as we operate our own church. We invite you to come, when you get saved, we encourage you to join the church."

While respondent's principal function at the hotel is its Bible Conference, other organizations have, at various times, been allowed to use the hotel facilities. These include: A Rotary Club, the Audubon Society, a weight watchers group and a nursery.

The judge who heard the matter in the Division concluded that in the circumstances the subject property should be

exempt from local taxation under N.J.S.A. 54:4-3.6. We disagree and reverse.

On this appeal, the City contends: that the hotel which solicits the patronage of the general public "is not actually and exclusively devoted to religious purposes within the meaning of N.J.S.A. 54: 4-3.6 even though providing speakers on religious topics and prayer services for those of its guests and customers who choose to participate in all or part of those religious activities"; that the Division should have given effect to the restrictive covenant referred to in the deed to respondent; that the Division judge failed to make requisite findings of fact and conclusions of law; and that the subject property is not entitled to tax exempt status since respondent is not authorized by its certificate of incorporation to operate a hotel.

The fundamental approach of our

statutes is that ordinarily all property shall bear its just and equal share of the public burden of taxation. As the existence of government is a necessity, taxes are demanded and received in order for government to function. * * * Statutes granting exemption from taxation represent a departure and consequently they are most strongly construed against those claiming exemption. * * * The burden of proving a tax-exempt status is upon the claimant. * * * (Princeton University Press v. Princeton, 35 N.J. 209, 214 (1961))

Here, the subject property could have been granted the tax exemption sought by respondent only upon a clear showing that the premises were "actually and exclusively used" for religious purposes. N.J.S.A. 54:4-3.6. No such showing has been made.

On the contrary, the record before us discloses that in substantial part the Christian Admiral Hotel was, during the tax year in question, being used as a vacation or recreational facility by church members and the general public. Here, as in Harvey Cedars v. Sisters of Charity of Saint Elizabeth, 163 N.J. Super. 564 (App. Div. 1978), recently decided by this court:

> Providing vacation facilities can simply not be viewed as reasonably necessary for the work of the (respondent) organization. The status or vocation of the owners or occupiers of property cannot determine property tax exemption. (at 568-569).

The determination below granting tax exemption was, in the circumstances, unwarranted and must be reversed. In view of this disposition of the cause, we find

no need to comment on any of the other issues raised by appellant.

The judgment under review is reversed and the matter is remanded to the tax court for the entry of an appropriate judgment reinstating the original assessments on the subject property. We do not retain jurisdiction.

A TRUE COPY

Elizabeth M. Laughlin

Clerk

STATE OF NEW JERSEY

DIVISION OF TAX APPEALS

DEPARTMENT OF THE TREASURY

DOCKET # L-979-74

Christian Beacon Press, Inc.
Petitioner

VS.

JUDGMENT

City of Cape May
Cape May County Respondent

Attorney for Petitioner

Charles Sandman, Jr., Esquire

Attorney for Respondent

John L. Ludlam, Esquire

Property Block: 156, Lot: 1, Beach and Pittsburgh Avenues

Year 1974

The above entitled appeal from the Judgment of the County Board of Taxation having been heard and the evidence presented and argument of counsel having been considered,

It is on the 11th day of January, nineteen hundred and Seventy-eight, ORDERED that final Judgment be entered as follows:

	ORIGINAL ASSESSMENT
LAND	300,000.00
BLDG	419,150.00
TOTAL	$719,150.00
	COUNTY BOARD ACTION
LAND	300,000.00
BLDG	419,150.00
TOTAL	$719,150.00

JUDGMENT

LAND

BLDG

EXEMPT

ATTEST D. Jean Haneikovsky
Acting Secretary

ATTEST Carmine F. Savino, Jr.
Judge

STATE OF NEW JERSEY

DEPARTMENT OF THE TREASURY

DIVISION OF TAX APPEALS

OPINION

DOCKET NO. L-979-74

- - - - - - - - - - - - - - - - -

CHRISTIAN BEACON PRESS, INC. :

Petitioner :

vs. :

CITY OF CAPE MAY :

Respondent :

- - - - - - - - - - - - - - - - :

SAVINO, J.

APPEARANCES:

KEITH J. BRADSHAW, EXQ.

and CHARLES SANDMAN, JR ESQ.

Attorneys for the Petitioner

JOHN L. LUDLUM ESQ.

Attorney for Respondent

Property known as Block 156 Lot 1 Tax year 1974.

	1974 Assessment	County Board
Land	$ 169,625	Dismissed
Improvements	346,825	
Total	$ 516,450	

The subject of this appeal is a large hotel located on an oceanfront plot facing the Atlantic Ocean in the City of Cape May known as the Christian Admiral Hotel.

The hotel is owned by a corporation known as the Christian Beacon Press, Inc.

Reverend Carl McIntire, a well known religious leader, is the minister and moving force behind the group. He claims an exemption from taxation on the hotel on the grounds that it is a property devoted exclusively to religious activity without profit.

The City refuses to grant an exemption because the tax assessor regards

the hotel as a commercial venture and does not qualify under N.J.S.A. 54:4-3.6.

The assessor also states that there is a covenant referred to in the deed running with the land that was imposed on a prior owner by the City wherein the City prohibited the sale of the property to any group that would seek a tax exemption. No explanation was given as to how and why this covenant was created.

The assessor also charged that the Certificate of Incorporation of the Christian Beacon, Press, Inc. was primarily created to be a publishing business devoted to printing, advertising, selling and issue christian and religious literature, newspapers, books and periodicals. He said running a hotel was not an objective of the corporation.

Rev. McIntire referred to a paragraph 8 of the Articles of Incorporation giving it the right to maintain, own and

have a place of religious worship.

The main witness for the taxpayer was Rev. Carl McIntire who identified himself as a minister of the Bible Presbyterian religious denomenation. A member of the Presbyterian Church and the pastor of the Bible Presbyterian Church of Collingswood, N.J. for the past 34 years. His only source of income was a salary from the Collingswood Church. He owned his own home in that town. It is assessed at $35,000. He drives an Oldsmobile automobile and devoted all of his time to his church and the Christian Beacon Press which he formed in 1940 to print and distribute religious literature over most of the country.

The Christian Beacon Press, Inc., charter was introduced into evidence. Under paragraph 5, "The purposes for which it is formed are as follows:

1. To spread the gospel of our

Lord and Savior, Jesus Christ, and encourage and promote the teaching, study and defense of the holy scriptures, according to the fundamentalist view, throughout the world, by publishing, printing, advertising, selling or otherwise issuing Christian and religious literature, newspapers, books, periodicals, or other printed matter, either under the corporation's name, or as agent for others."

Paragraph eight of the charter provided "to acquire, maintain, own and have a place of religious worship."

Paragraph nine stated: "This corporation shall not be operated for pecuniary profit."

This charter was part of a Certificate of Incorporation filed in 1949.

Letters granting the taxpayer exemptions from taxation were placed in evidence. They were from the U.S. Treas-

ury Department, the Department of Internal Revenue, the N.J. Department of Labor and Industry, and other similar letters. A Letter from Herbert S. Silverstein, chief auditor of the N.J. Department of Labor stated:

> "Based on information recently obtained by our field auditor, it has been determined that you are not an employer subject to the New Jersey Unemployment Compensation Law since the term 'employment' does not apply to services in the employ of a church or organization operated primarily for religious purposes, and we have cancelled your account under Registration No. 313884.
>
> "In view of the above, no contributions are due under either the New Jersey Unemployment Compensation Law or the New Jersey Temporary

Disability Benefits Law. Very truly yours."

In another letter to Rev. McIntire signed by Martin Gartzman of the Department of Labor and Indistry on November 26, 1974, stated:

"State of New Jersey, Department of Labor and Industry, November 26, 1974, Re: Christian Beacon Press, Beach Palm Restaurant, Winser Hotel, Congress Hall, Christian Admiral Hotel.

"In accordance with our discussion on October 23rd, 1974, I am writing to you as requested, advising that after careful consideration, we find that for the months of June, July, August, and September, the above establishments are exempt. This exemption applies to summer camps, conferences and regular retreats operated by any non-profit

or religious corporation or association.

"Since you do meet the requirements as provided for by Chapter 58, Laws of New Jersey 1968, you would be exempt from the minimum wage and compensation for overtime work during that period of time."

The Christian Admiral is an impressive looking building facing the ocean on Beach Street. It is six stories high, contains two restaurants and rooms for several hundred guests.

Rev. McIntire described part of the Admiral Conference Center as he called it as follows:

When you enter the lobby on either side is a lounge and a fireplace, you move into the center of the lobby and the corridor extends the length, down both sides there are marble columns there, that were put into the building

when it was erected in 1966. You turn to the right and on that corridor there is a table, rather long table, which we have literature and material that we provide, about our activities and our testimony. At the end of that is the door that goes into the reformation hall, it used to be the dance hall and the bar room. That is an auditorium which has a pulpit in the center, two pianos, one on either side and about 200 chairs. It is used for services, it is used every Sunday during the year for a church service and in the summertime, during the height of the conference, it is used for Sunday School services.

Just beyond that, is the library, The Bancroft Library. It extends the length of the side of the building, at that point, it has books stacked against one wall all the way down with several thousand books. The outside walls with

the windows have pictures on them of religious leaders, Martin Luther and abundance of others that are well-known religious leaders, and writing tables and down at the end, there is a microphone and a place from which we broadcast.

Rev. McIntire went on to describe the rest of the building in the same manner.

He admitted there was a gift shop in the basement that sold moderately priced items to guests as souvenirs. He also admitted the two restaurants were open to the public where meals were served at very low prices. One witness testified later that he ate a baked flounder dinner for $1.75. Other meals were priced up to $2.50.

Rooms including three meals a day with private bath rented for $21.00 a day per person. Rooms with a common

bath at the end of the hall, rented for $18.00 per day.

Rev. McIntire explained that the purpose of opening the restaurants to the general public was for the purpose of exposing them to the reading of his religious literature and talks with people associated with his church. He claimed that the building operated at a deficit and funds were needed from donations from people and from proceeds of the Christian Press in Collingswood.

When Rev. McIntire purchased the building, it was closed and the lower part boarded up. He insisted that his only purpose for acquiring the building was to use it as a center for bible conferences.

Corrobative testimony that the building was used exclusively for religious activities was furnished by Rev. McIntire's wife. She described

how she led large groups of volunteers to clean up and refurbish the vacant building. In answer to the question, "where did these people come from?" she answered:

> A The Bible Presbyterian Church of Collingswood, New Jersey. Some of us had gotten the layout of the hotel and we had gone in all the rooms and saw what needed to be done. So we told the people to bring those mops and brushes and brooms and all the rest of it. As they came up to us, we would assign them certain rooms. If the rooms were not very dirty, we would give two people four rooms. If they were very dirty, we would give them two rooms to do. We told them to push everything out in the hall, sweep it, clean it out and we had men carry the debris from the top floor and put it in the

truck and carry it away. We invited people to come down on weekends and work also. We tried to get out church, every class, every Sunday School.

Q May I interrupt you. These people that came down from the church, were they volunteers or paid?

A None of us were paid.

Q Did you receive any salary?

A Absolutely nothing.

Another witness, Shirley Cox, a resident of Cincinnati, Ohio for 60 years, became acquainted with the Bible Presbyterian Church there with her husband. She came to the Christian Admiral in 1967. During services there her 15 year old son stepped forward to give his life to Christ. She said it was the proudest moment of her life. Later the boy was accepted as a student in Shelton

College so that he could be a minister in the church. The boy was killed in an accident. The parents who were earning about $20,000 a year in their employment retired from their jobs and came to work at the Christian Admiral as volunteers. She managed the gift shop, was a soloist in the choir, and was in charge of four o'clock service on Sunday afternoon. Her husband became a handyman around the premises. They received no compensation.

Mrs. Cox was asked, what does this mean to you? Her answer: "Well, it means eternal life, it means salvation and I also pray all my life. I went to church because it was the thing to do."

Mrs. Cox ran the gift shop and explained the items were sold at a low markup and the receipts went to a general fund.

Rev. Morris C. McDonald testified. A resident of South Carolina, he is an

Evangelist minister of the Bible Presbyterian Church. He comes to the Christian Admiral many times. He was a speaker at conference meetings from 1972 to 1977 during periods of one to two weeks. He described his activities as follows:

> The Conferences would be at 10:00 o'clock in the morning; 8:00 o'clock each evening, and I shared my week, that particular summer, with the Reverend Horace MacEwen from Toronto, Ontario, and the major messages that I brought that summer were from Psalms 78 and Luke 13 and Romans Chapter 3 and Romans Chapter 9, and Second Corinthians 13. And then I would speak also to the staff and devotional times before they would give their days work down in the cafeteria and then on occasion, we would have a special

> youth meeting out on the front porch for a time of singing after the evening work was over and the evening services was over.

He then described in detail his work with young people by holding group discussions, as well as, private meetings.

Rev. John Battle, a resident of the Faith Theological Seminary in Elkin Park, Pennsylvania also testified. He is an ordained minister of the Bible Conference Church and his detailed testimony was similar to that of Rev. McDonald.

Rev. Lynn Gray Gordon, an ordained minister in Pine Grove, Pennsylvania testified. He was connected with many missions and is the General Secretary of the Foreign Missions Board. He also stayed at the Christian Admiral and performed similar duties as the other ministers.

Irene M. O'Dell, a resident of

Collingswood, N.J. came to work at the Christian Admiral after her husband died in 1964. She is employed full time at various duties for the Bible Conference and is paid $8,000 per year. Her major duties were in charge of the desk for admittance to the building. She emphasized no smoking or drinking was allowed. She also turned away young couples who were not married. A registration card had to be filled out and kept on file. A membership card for the church cost $1.00.

Testifying for the City was Arthur Doran, a resident of Cape May City.

He testified that he ate a meal at the George Washington Room of the Christian Admiral several years ago. He said that when he and his wife entered the building for purpose of having dinner no one approached him to request he become a member of the church.

He said he was seated by a hostess. He admitted that he enjoyed the meal and the price was $1.75. He never came back because he saw mice. He was identified as the building inspector of Cape May City.

The owner of a hotel who charged similar rates as the Christian Admiral testifies for the City. His hotel was almost two blocks from the Ocean and was rather old. However, he claimed he could not charge more for his rooms because of the low rates of the Christian Admiral. Under cross-examination, he admitted that he bought a new motel adjacent to his old building and a liquor license was used by both buildings. He also admitted he would demolish his old hotel but it would cost too much.

John T. Dollinger, tax assessor for Cape May City, was the last witness. He testified that he refused to grant an

exemption to the Christian Admiral because he regarded it as a commercial operation. He cited the two restaurants, the gift shop and the fee for room and board as the reasons the building could not be exempted from taxes. He also charged that a covenant in the deed to Rev. McIntire's church prohibited the sale of the property to any tax exempt buyer.

A review of the testimony offered by the many witnesses during two full days of trial leads to the following conclusions:

1. The court finds as a fact that the sale of objects in the gift shop and fees charged for room and board were not made for pecuniary profit in the Christian Admiral Hotel.

2. The object of the low fees charged for room and board and the lovely location of the building on the beachfront

was for the purpose of inducing members of the general public to enter the premises and to become involved in the religious atmosphere created there by the members of the church.

SUPREME COURT OF NEW JERSEY

C- 102 SEPTEMBER TERM 1979

ON PETITION FOR CERTIFICATION

.. ..

CHRISTIAN BEACON PRESS, INC.,

Petitioner-Petitioner,

v.

CITY OF CAPE MAY,

Respondent-Respondent.

To the Appellate Division, Superior Court:

A petition for certification of the judgement in A-2327-77 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice at Trenton, this 4th day of October, 1979.

Clerk

SUPREME COURT OF NEW JERSEY
C-102 SEPTEMBER TERM 1979

FILED

OCT 5 1979

CLERK

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Stephen W. Townsend
Clerk

A TRUE COPY
Stephen W. Townsend,
CLERK

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Supreme Court, U. S.
FILED
FEB 15 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1142

CHRISTIAN BEACON PRESS, INC.,

Petitioner,

vs.

CITY OF CAPE MAY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

ARGUMENT:

POINT I: The Petition should be denied because it was not filed within ninety days after entry of the Judgment of the New Jersey Supreme Court 1

POINT II: This Petition should be denied because Petitioner has not complied with, and cannot comply with, the requirements of *Rule* 23(f) of the Rules of this Court 1

Conclusion 4

STATUTE CITED:

N.J.S.A. 54:4-3.6 2

CODE CITED:

28 U.S.C. §2101(c) 1

RULE CITED:

Rule 23(f) 1

ARGUMENT

Point I

The Petition should be denied because it was not filed within ninety days after entry of the Judgment of the New Jersey Supreme Court.

This is a Petition for Certification to review a Final Judgment of a State Court in a civil action which must be filed within ninety days after entry of Judgment. 28 U.S.C. §2101(c). Judgment was entered by the Supreme Court of New Jersey on October 4, 1979. (Petitioner's Appendix p. 36) The ninety day time period expired on January 2, 1980. This Petition was not filed until January 15, 1980.

Point II

This Petition should be denied because Petitioner has not complied with, and cannot comply with, the requirements of *Rule* 23(f) of the Rules of this Court.

Rule 23(f) requires that the Petition in this matter:

> "specify the stage in the proceedings in the court of first instance and in the appellate court, at which, and the manner in which, the federal questions sought to be reviewed were raised; the method of raising them (e.g., by a pleading, by request to charge and exceptions, by assignment of error); and the way in which they were passed upon by the court; such pertinent quotations of specific portions of the record, or summary thereof, with specific reference to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show

that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari."

The Petition and Appendix in this matter are totally devoid of the required references.

It is respectfully submitted that this omission is not a matter of oversight which can be cured. The Petitioner did not advance the argument that denial of a real property tax exemption under the facts of this case constituted a violation of the Fourteenth Amendment right to equal protection until the filing of this Petition.

This action arose out of the refusal of the Tax Assessor of the City of Cape May to grant an exemption from real property taxation on a 333 room, multi-story, ocean front hotel with olympic swimming pool, rooftop restaurant and other amenities.

Exemption was sought pursuant to *N.J.S.A.* 54:4-3.6 which provides for exemption of property "actually and exclusively" used for religious purposes. Petitioner contended that its use of the premises was consistent with the requirements of actual and exclusively religious use.

It is well established New Jersey law that:

> "statutes granting exemption from taxation . . . are most strongly construed against those claiming exemption . . . the burden of proving a tax exempt status is upon the claimant." *Princeton Univ. Press v. Princeton*, 35 N.J. 209, 214 (1961)

The Court below citing that authority, reviewed the record and concluded:

> "No such showing has been made. On the contrary, the record before us discloses that in substantial part the Christian Admiral Hotel was, during the tax year in question, being used as a vacation or recreational facility by church members and the general public. Here, as in *Harvey Cedars v. Sisters of Charity of Saint Elizabeth*, 163 N.J. Super. 564 (App. Div. 1978), recently decided by this Court:
>
> > 'providing vacation facilities can simply not be reviewed as reasonably necessary for the work of the (respondent) organization. The status or vocation of the owners or occupiers of property cannot determine property tax exemption.'"

The authority cited by the Court below demonstrates that the treatment of the taxpayer in this case was not discriminatory but consistent with the interpretation of the New Jersey Tax Exemption Statutes uniformly applied to other religious organizations.

CONCLUSION

For all of the foregoing reasons, it is submitted that a writ of certiorari should be denied.

Respectfully submitted,

SAUL A. WOLFE
Counsel for Respondent,
City of Cape May